

OGC Has Reviewed

15 February 1973

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MEMORANDUM FOR: Chief, FE Support

SUBJECT:

REFERENCES:



1. This Office has reviewed the facts of subject case as presented in the references and advises as follows.

a. The long time lag between the date of the accident (2 August 1971) and notification of this Office (January 1973) limits the options available to us to settle the case.

b. The facts as presented are that [REDACTED] was driving a QP car registered to him on official business at the time of the accident. He was charged and plead guilty apparently without the benefit of counsel either by this Office or his insurance carrier. He has now been sued for \$25,000 general damages and an additional, unspecified sum, for special (compensatory) damages. The \$25,000 alone is in excess of the vehicle's policy limits.

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c. Reference B. is a letter from the insurance carrier's lawyers advising [REDACTED] that they will defend him for the full amount of the suit but that he

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has a right, and may want, to hire his own attorney for the "overage"--the amount claimed which exceeds the policy limits.

d. This Office believes GEICO and their lawyers should not be in the case at all. The action lies strictly within the purview of the Federal Tort Claims Act, which Act is obligatory with respect to its coverage. 28 U.S.C.A. 2679 (copy attached).

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2. Accordingly, it is our recommendation that [REDACTED] be put in touch with the local Office of the Judge Advocate General asking that the Government assume the liability and defend the case. Clearance for this action should, of course, be obtained from Central Cover Staff. The undersigned has already discussed the case in general with [REDACTED] CCS. [REDACTED] If this Office can be of any further assistance in briefing the representatives of the other Government agencies, please call.

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Assistant General Counsel

Att

GMB:ks

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TORT CLAIMS PROCEDURE

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Note 4

cute ease to a final conclusion. Barnett v. U. S., D.C.Fla.1948, 78 F.Supp. 186.

Plaintiff's attorneys in personal injury action were awarded 20 per cent of plaintiff's \$9,000 recovery. Colerick v. U. S., D.C.Fla.1948, 77 F.Supp. 953.

Under this section authorizing court as part of judgment to allow attorneys' fees to claimant's attorneys, not exceeding 20 per cent of the recovery to be paid out of the judgment, fees of attorneys for plaintiff in wrongful death action wherein judgment of \$7,571.48 was recovered was fixed at \$1,250. Van Wie v. U. S., D.C.Iowa 1948, 77 F.Supp. 22.

\$500 payable out of total recovery of \$1,500 was reasonable fee for plaintiff's attorney in action under section 1346(b) of this title to recover for injuries sustained by plaintiff when struck by automobile operated by federal government employee in scope of his employment. Norton v. U. S., D.C.Tex.1947, 74 F.Supp. 273.

Court awarding \$15,000 against United States for death of motorist fatally injured in collision with Navy bus would allow an attorney's fees of 20 per cent, where that amount was requested by plaintiff. Spell v. U. S., D.C.Fla.1947, 72 F.Supp. 731.

5. Interest

Plaintiff's attorney whose fee was fixed by final judgment in case under this chapter and section 1346(b) of this title which was affirmed on appeal was entitled to such interest on attorney's fees as might be paid by defendants. Price v. U. S., D.C.Va.1961, 195 F.Supp. 203.

6. Apportionment of fees

Code 1950, § 65-39.1 relating to apportionment of attorneys' fees, in action for injury to employee, between employer and employee, was applicable to action under this chapter and section 1346(b) of this title commenced prior to passage of said provisions where final judgment had not been entered prior to effective date thereof. Stancil v. U. S., D.C.Va.1961, 200 F. Supp. 36.

In action under this chapter and section 1346(b) of this title, court charged 20 per cent of fee allowed to counsel for successful plaintiff against reimbursement received by compensation insurer who benefited by plaintiff's recovery to extent of death benefits paid to widow under Virginia Workmen's Compensation Act, Code 1950, § 65-1 et seq. Id.

§ 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim. As amended July 18, 1966, Pub.L. 89-506, § 5(a), 80 Stat. 307.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy

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thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d) Upon a certification by the Attorney General that the defendant employee was acting within the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings deemed a tort action brought against the United States under the provisions of this title and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (b) of this section is not available against the United States, the case shall be remanded to the State court.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect. June 25, 1948, c. 646, 62 Stat. 984; Sept. 21, 1961, Pub.L. 87-258, § 1, 75 Stat. 539.

Historical and Revision Notes

Reviser's Note. Based on Title 28 U.S.C., 1940 ed., § 945 (Aug. 2, 1948, c. 753, § 423, 60 Stat. 846).

Changes were made in phraseology. 80th Congress House Report No. 308.

Senate Revision Amendment. Section 2680 was renumbered "2679" by Senate amendment. 80th Congress Senate Report No. 1550, Amendment No. 63.

1961 Amendment. Pub.L. 87-258 designated existing provisions as subsec. (a) and added subsecs. (b)-(e).

Effective Date of 1961 Amendment. Section 2 of Pub.L. 87-258 provided that: "The amendments made by this Act [adding subsecs. (b)-(e) of this section] shall be deemed to be in effect six months after the enactment hereof [Sept. 21, 1961] but any rights or liabilities then existing shall not be affected."

Legislative History. For legislative history and purpose of Pub.L. 87-258, see 1961 U.S. Code Cong. and Adm. News, p. 2784.

Cross References

Area redevelopment program activities, section as applicable, see section 2511(11) of Title 42, The Public Health and Welfare.

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